

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

GENE LEMAY BARRIS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent,

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No. 1:16-CV-207 JAR

MEMORANDUM AND ORDER

This matter is before the Court on its own review of Movant's motion to vacate, brought pursuant to 28 U.S.C. § 2255. In his motion to vacate, Movant seeks a reduction in his sentence pursuant to the recent Supreme Court case of Johnson v. United States, 135 S. Ct. 2551 (2015).

In Johnson, the Supreme Court of the United States held the "residual clause" of the Armed Career Criminal Act ("the ACCA"), 18 U.S.C. § 924(e)(2)(B)(ii), unconstitutionally vague. As Movant received a sentence that was enhanced under the ACCA and as it appears from the motion to vacate that he is relying on Johnson as the basis for his arguments for resentencing, this Court will request assistance from the United States Probation Office for the Eastern District of Missouri in reviewing Movant's § 2255 petition.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court shall notify the United States Probation Office of Movant's § 2255 motion to vacate and that it is brought pursuant to the Supreme Court case of Johnson v. United States, 135 S. Ct. 2551 (2015).

IT IS FURTHER ORDERED that, within a reasonable time, and in its usual course of business, the United States Probation Office shall prepare and file in Movant's criminal case a


new Resentence Report relative to Movant's contentions under Johnson, which shall be filed under seal, with access to the Court and the parties who have entered their appearance in this matter. Specifically, the Court seeks information relating to whether Movant has three or more previous convictions for a "violent felony" or a "serious drug offense," or both, as those terms are defined in the ACCA.

IT IS FURTHER ORDERED that within fourteen (14) days of the filing of the Probation Office's Disclosure Copy of the Resentence Report, the parties shall file, in Movant's criminal case, simultaneous objections to the Resentence Report or statements that they have no objection. Within seven (7) days of such time, the Office of Probation and Pretrial Services shall file a final copy of the Resentence Report in Movant's criminal case.

IT IS FURTHER ORDERED that on the same day as the Final Resentence Report is filed by the Probation Office in the criminal case, the Government shall file its response to Movant's motion to vacate in this case.

IT IS FURTHER ORDERED that any reply to the Government's response to the motion to vacate shall be filed, in this case, no later than fourteen (14) days from the date the response is filed.

Dated this 10th day of November, 2016.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE